IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22368 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT GARMENT CO.OP.IND. ESTATE LTD. - Petitioner(s)
Versus
STATE OF GUJARAT THRO.SECRETARY & 2 - Respondent(s)

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Appearance :
M/S THAKKAR ASSOC. for Petitioner(s) : 1,
MR DIPEN DESAI, ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 21/11/2006

ORAL JUDGMENT

1. Rule. Mr. Desai, learned Assistant Government Pleader waives notice of Rule for respondent Nos.1, 2 and 3 and with consent of learned advocates appearing for both the sides, the matter is finally heard today.

2. The petitioner has preferred the petition for challenging the order dated 11/10/2006 passed by respondent No.3, whereby further construction was stayed over the land in question pending the proceedings of resumption of the land by the Government for breach of the condition.

3. This Court when considered the matter for the first time on 13/10/2006 had passed the following order:-

> "Mr. Thakkar, learned counsel for the petitioner states that if the construction and/or use of the land is allowed to continue until the final decision is taken by the Collector, no additional equity shall be claimed by the petitioner in the event, the petitioner fails in its challenge against resumption of the land.
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> Notice returnable on 10th November, 2006. By ad-interim order, the operation of the impugned order dated 11.10.2006 shall remain stayed with further direction that any construction made by the petitioner shall not be treated as an additional ground for claiming further equity pending the proceedings before the Collector in the event the petitioner fails in maintaining the challenge against resumption of the land. D.S."

4. It is not in dispute that the matter is still pending before the District Collector, who has to consider the matter after giving opportunity of hearing to the petitioner and after considering all relevant aspects germane to the exercise of the power. Since the declaration has already made on behalf of the petitioner that if the construction and/or use of the land is allowed to continue until the final decision is taken by the Collector, no additional equity shall be claimed by the petitioner in the event, the petitioner fails in its challenge against resumption of the land, in my view the interim order can be allowed to continue for some more time and the Collector may decide the matter within some stipulated time. Mr. Desai has also not seriously objected the continuation of the interim order with the clarification as recorded in the order dated 13/10/2006 until the matter is finally heard by the District Collector and the appropriate decision is rendered.

5. In view of the same, I find that no further reasons are required to be recorded, since the

learned advocates appearing for both the sides are in agreement for continuation of the interim order until the District Collector decide the matter finally.

6. Under the above circumstances, the present petition is disposed of with a direction that the Collector shall decide the matter in accordance with law within period of 4 months from the receipt of the order of this Court and until the order is passed and communicated to the petitioner by Regd. Post A.D., interim order dated 13/10/2006 read with order dated 27/09/2006 passed by this Court in Special Civil Application No.20614 of 2006 shall continue to operate.

7. It is clarified that the District Collector shall be at liberty to pass appropriate order independently in accordance with law and the observations made by this Court in the present order shall not prejudice the rights of either side.

(JAYANT PATEL,J.)

mrpandya*